

VZCZCXRO5383  
RR RUEHFL RUEHLA RUEHMRE RUEHROV RUEHSR  
DE RUEHC #4285/01 0430030  
ZNY CCCCC ZZH  
R 120027Z FEB 08  
FM SECSTATE WASHDC  
TO RUEHVEN/USMISSION USOSCE 7832  
INFO ORG FOR SECURITY CO OP IN EUR COLLECTIVE  
RUEHPS/USOFFICE PRISTINA 3635  
RUEHBS/USEU BRUSSELS  
RUEHNO/USMISSION USNATO 0765  
RUCNDT/USMISSION USUN NEW YORK 0576  
RUEHUNV/USMISSION UNVIE VIENNA 2579

C O N F I D E N T I A L SECTION 01 OF 02 STATE 014285

SIPDIS

SIPDIS

E.O. 12958: DECL: 02/10/2018  
TAGS: [PREL](#) [UN](#) [UNMIK](#) [PGOV](#) [YI](#) [EU](#) [OSCE](#)  
SUBJECT: OSCE - DEFENDING THE U.S. KOSOVO POSITION IN  
VIENNA

REF: USOSCE 31

Classified By: EUR Principal DAS Kurt Volker, reasons 1.4 (b) and (d).

11. (U) This cable is an action request (see para 3) and responds to USOSCE's reftel request for guidance.

12. (C) BACKGROUND: We understand that Serbia intends to invoke the Berlin Mechanism immediately after an expected declaration of independence (DI) from Kosovo. We believe that Serbia's purpose for calling such a meeting would be to try to embarrass countries that recognize independence, declare any such action a violation of the Helsinki Final Act (HFA) and cast a pall of illegitimacy over our actions. Our European partners have reported that both Russia and Serbia have been active lobbying OSCE members to support such a move. Disturbingly, we have heard that some EU members, including Spain, are sympathetic to holding such a meeting.

13. (U) The Berlin Mechanism for consultation and cooperation with regard to emergency situations was adopted by OSCE participating States at the first meeting of the Ministerial Council in June 1991. The mechanism was designed to facilitate the resolution of serious emergency situations resulting from a violation of one of the principles of the Helsinki Final Act in one or more of the participating States. To trigger the mechanism, an OSCE participating State would circulate a written statement in Vienna. An initial written response by the states involved is required within 48 hours of the initial triggering of the mechanism. Should the request for a meeting garner sufficient support (12 participating States), the procedures foreseen by the mechanism mean that approximately five to seven days will elapse from initial invocation to convocation of the emergency meeting.

14. (C) Department requests that USOSCE lobby OSCE participating-State delegations to oppose the invocation of the Berlin Mechanism in order to prevent Serbia and Russia from obtaining the support of the twelve OSCE participating States necessary for the convocation of an emergency session under the mechanism. We recommend against entering into a detailed, point-by-point disputation on which principles of the HFA are applicable. Instead, we should restate our general points about why Kosovo's independence is necessary for the preservation of peace and stability in Europe and explain why the Berlin Mechanism is not the appropriate forum for a discussion on this issue. We recommend an approach to other delegations that emphasizes the following themes:

-- The United States and most European Union member states intend to recognize Kosovo's independence in order to prevent the deterioration of an unsustainable status quo and stave

off a new crisis in southeastern Europe.

-- No stone was left unturned in the quest for a negotiated agreement, which has nevertheless proved impossible. Failure to act would have damaging consequences for the political, social and economic development of Kosovo and the region of Southeast Europe and risk unraveling the hard-won achievements of the OSCE and other international institutions in Kosovo over the past nine years.

-- Kosovo is clearly a special case, which must be seen as the final stage of Yugoslavia's non-consensual break-up. Milosevic's policies of oppression and ethnic cleansing, UNSCR 1244 that set up a UN administration, severed Serbia's governance over Kosovo and envisioned a political process to determine Kosovo's status make Kosovo different from other conflicts.

-- The OSCE is not the primary venue for this discussion. The situation in Kosovo is governed by the terms of a specific resolution of the U.N. Security Council, UNSCR 1244. It is resolution 1244 against which we should be measuring the events that are unfolding in Kosovo. That discussion must take place in New York, not Vienna.

-- Serbia's desire to invoke the Berlin Mechanism after a Kosovo DI is a political ploy designed to attack countries that are taking action to resolve a looming crisis. Such a disingenuous use of the Berlin Mechanism would diminish the

STATE 00014285 002 OF 002

OSCE. While it is appropriate for participating States to raise issues of concern in the Permanent Council, invocation of the Berlin Mechanism implies a much more serious situation. Participating States should not, by the seemingly "neutral" act of agreeing to invocation of the Berlin Mechanism, lend implicit support to the view that Kosovo independence constitutes a violation of the Helsinki Final Act principles.

-- We must not forget that the current situation in Kosovo is the consequence of the violence, ethnic cleansing and gross violations of international humanitarian and human rights law. After that history, and almost a decade of increasing and successful self-government, Kosovo's return to Serbia is not viable.

(IF RAISED)

-- For the reasons stated above, recognition of Kosovo's independence is not a violation of the principles of the Helsinki Final Act (HFA). We are acting to advance the purposes of the HFA and preserve peace and security in Europe.

15. (SBU) The following talking points may be used to address arguments that Kosovo's independence reflects an illegal violation of Serbia's sovereignty and territorial integrity:

Q: IS RECOGNITION OF KOSOVO'S INDEPENDENCE GOING TO SET A PRECEDENT THAT WILL ENCOURAGE SEPARATISM ELSEWHERE?

-- No. The situation in Kosovo is truly sui generis and its independence should be seen as the very last stage of the long process of the break-up of the former Yugoslavia and in the context of Yugoslavia's violent collapse.

-- Among the factors that make it appropriate to view Kosovo as a special case are the violent, non-consensual break-up of Yugoslavia, the history of ethnic cleansing and crimes against civilians in Kosovo, the extended period of international administration, and the establishment of a UN-facilitated process designed to determine final status.

-- Perhaps most important, the situation in Kosovo is governed by the terms of a specific resolution, UNSCR 1244, adopted by the UN Security Council. UNSCR 1244 was intended

to help determine Kosovo,s future status through a political process that contemplated the possibility of independence.

-- It would be irresponsible to disregard the extraordinary circumstances that have led us to this point and cite Kosovo as a precedent for other situations arising from very different facts.

Q: IS RECOGNITION OF KOSOVO'S INDEPENDENCE A VIOLATION OF UN SECURITY COUNCIL RESOLUTION 1244, WHICH EXPRESSLY AFFIRMS THE "SOVEREIGNTY AND TERRITORIAL INTEGRITY" OF SERBIA AND REFLECTS AN IMPORTANT PRINCIPLE IN THE HELSINKI FINAL ACT?

-- No. Language in 1244 on the territorial integrity of Yugoslavia referred only to the interim stage of Kosovo's political development, and not to its final status.

-- Moreover, the basic language on territorial integrity is set out in the preamble and not as a decision of the Security Council that would create obligations under international law. Nothing in that language bars independence in the circumstances in which Kosovo now finds itself.

-- While Resolution 1244 aimed for an agreement between the parties, it did not require one.

-- 1244 envisaged a Final Status process for Kosovo but did not pre-determine the outcome. As we all know, that process was taken forward by the UN Special Envoy, Martti Ahtisaari, and culminated in his proposals for Final Status.

-- Every effort has been made to reach a mutually-agreed solution, most recently in the Troika process. But every such effort has failed.

-- At this point, prompt resolution of Kosovo,s status is needed to ensure long-term stability, and to promote Euro-Atlantic integration for Serbia, Kosovo and the entire region.

//END POINTS//  
RICE